

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

**DECLARATION OF THOMAS KEARNEY IN SUPPORT OF COX'S
OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Thomas Kearney, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am Of Counsel with the firm of Winston & Strawn LLP, attorneys of record for Cox Communications, Inc. and CoxCom, LLC (collectively, "Cox") in this matter. I am a member of the bar of the State of California, and have been admitted *pro hac vice* to practice before this Court in this matter. I have personal knowledge of all facts stated in this declaration, except where facts are stated on information and belief, and as to such facts I believe them to be true. If called upon as a witness, I could and would testify competently thereto.

• **Documents**

2. **Exhibit K1** is a table that reproduces (in Column 1) Plaintiffs' proposed Statement of Undisputed Facts from their summary judgment brief, ECF 313, and provides (in Column 2) Cox's responses from its Opposition brief (filed concurrently with this Declaration). Cox provides this table for the Court's ease of reference.

3. **Exhibit K2** is a true and correct copy of relevant excerpts from the Consolidated Trial Transcript in *BMG Rights Mgmt. (US) LLC v. Cox Enters., Inc.* Case No. 1:14-cv-01611-LO-JFA (E.D. Va.). For ease of reference, the portions cited in Cox’s Opposition are set forth here:

a) **Exhibit K2** at 229-239:

- i) 230:9-10: “The evidence of the infringement is not going to be the notice itself.”
- ii) 231:2-4 “... the jury is going to have to make the decision as to whether it [the Rightscorp system] accurately identifies infringements.”
- iii) 231:20-25: “THE COURT: So you do want to use the notices and the information in the notices as proof of infringement? MR. CARACAPPA: The notices are a manifestation of the system. So we're not taking the notice itself and saying, here, it's accurate evidence of infringement. THE COURT: Right.”
- iv) 239:7-18: “... if we have not proven infringement yet, that's a jury decision ... the ultimate question of infringement ... [is] an issue that the jury should decide[.]”

4. **Exhibit K3** is a true and correct copy of a document Bates labeled RIAA_00000045-58, which was produced by third-party RIAA in this matter on February 22, 2019, titled “Statement of Work (‘SOW’).” The document, [REDACTED]

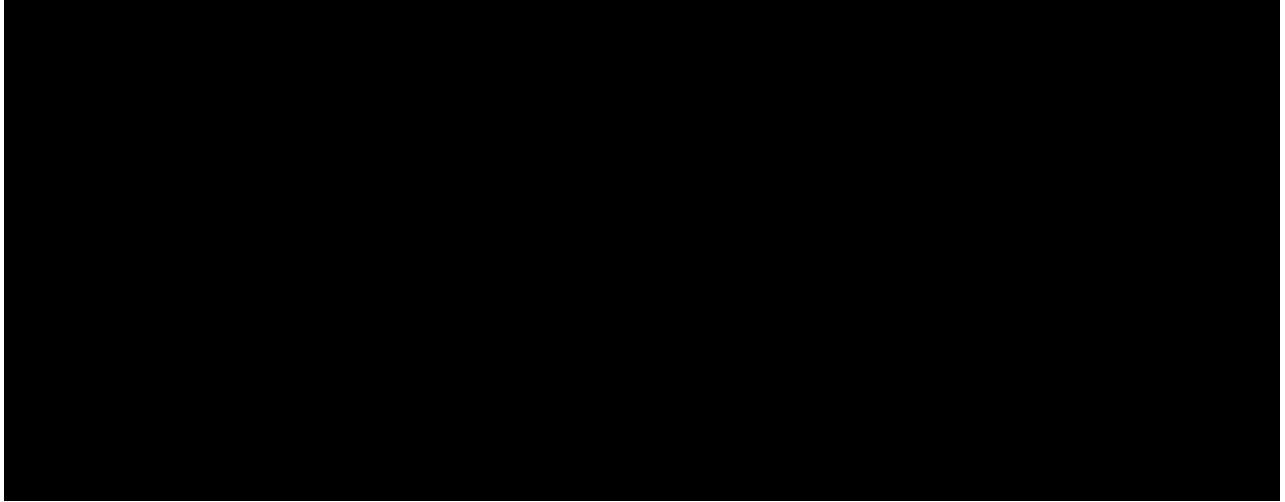
[REDACTED]

[REDACTED]

[REDACTED] *Id.* RIAA_00000045.

5. **Exhibit K4** is a true and correct copy of the Declaration of Lynne J. Weber, Ph.D., which was filed as ECF No. 364-8 in this case, together with Exhibits A and B to that declaration (filed as ECF Nos. 364-9 and 364-10, respectively).

6. **Exhibit K5** is a true and correct copy of a document Bates labeled COX_SONY_00519137 – 199, which was produced by Cox in this matter. This document is an email and attachment dated March 15, 2010. The attachment includes the following two slides at COX_SONY_00519198 and COX_SONY_00519199, respectively:



7. **Exhibit K6** is a true and correct copy of a document Bates labeled RIAA_00127769-88, which was produced by third-party RIAA in this matter on February 22, 2019. The document (the “Stroz Friedberg Assessment”) is titled “Independent Expert Assessment of MarkMonitor AntiPiracy Methodologies,” and dated October 14, 2012. According to the Stroz Friedberg Assessment:

a)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at RIAA_00127771.

b)

[REDACTED]
[REDACTED]
[REDACTED] *Id.* at RIAA_00127777.

c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at

RIAA_00127777.

d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at RIAA_00127777.

e) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at RIAA_00127780.

f) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at RIAA_00127786.

g) [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at RIAA_00127775.

h) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at RIAA_00127779.

i) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at

RIAA_00127784-785.

- **Discovery**

8. I am readily familiar with discovery that has been conducted and documents that have been exchanged in this litigation. To my knowledge, Plaintiffs and their agents (including the RIAA and MarkMonitor) have not produced files, or pieces of files, purporting to be copies of works-in-suit downloaded from any Cox subscriber.

9. When Cox offered to identify a sampling of Cox subscribers who had been the subject of notices alleging infringement, Plaintiffs declined the offer. At Plaintiffs' request, Cox did subsequently identify thousands of Cox Business subscribers who had received such notices. On information and belief, Plaintiffs have not sought to obtain any discovery with that information.

10. On information and belief, Plaintiffs did not attempt to obtain discovery from any Cox subscriber during the course of this litigation.

11. On information and belief, Plaintiffs made no attempt during the Claims Period to obtain discovery concerning any of the Cox subscribers who were the subject of Plaintiffs' notices in this case.

12. On information and belief, Plaintiffs did not bring legal actions against any of the Cox subscribers who were the subject of Plaintiffs' notices in this case.

13. I have reviewed the copyright infringement notices directed to Cox that Plaintiffs produced in this case (the "RIAA Notices"). **Exhibit K7** is a true and correct copy of a representative RIAA Notice. Plaintiffs' "Statement of Undisputed Fact" ("SUF") No. 14, which concerns the RIAA Notices, is factually incorrect in a number of particulars, including the following:

a) SUF 14 states: "The foregoing notices were made under penalty of perjury by RIAA[.]"

This is incorrect; at a minimum, it is highly misleading. As indicated in the above-referenced Exhibit, the only statement in the RIAA Notices that was made under penalty of perjury was this: [REDACTED]

[REDACTED]

[REDACTED]

b) SUF 14 states: "The foregoing notices ... included the elements of information required under the Digital Millennium Copyright Act, 17 U.S.C. § 512(c)(3)(A)." This is incorrect. Among other things, the DMCA requires that such a notice must include "Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material." 17 U.C.S. § 512(c)(3)(A)(iii). The RIAA Notices fail to provide the required information, for three

independent reasons. *First*, this provision does not, and cannot, apply to an ISP like Cox

[REDACTED]

[REDACTED] *Second*, the information in the RIAA Notices was insufficient to permit Cox to locate the material at issue, which, again, [REDACTED]

[REDACTED] *Third*, to the extent Plaintiffs claim that Cox and/or its subscribers infringed additional works that may have been *included* in a torrent file (along with the work that was actually named in a particular RIAA Notice), the RIAA Notices failed to provide the required “[i]dentification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.” 17 U.C.S. § 512(c)(3)(A)(ii).

- c) SUF 14 states: “The notices contained, inter alia, ... a representative sample of what was infringed[.]” This is false. As Exhibit K7 indicates, none of the RIAA Notices contained *any* infringed content, nor any *sample* of such content.

14. Plaintiffs’ SUF 19 states: “None of the Cox subscribers who were the subject of MarkMonitor’s notices to Cox during the Claim Period provided a counter-notification to Cox to dispute the allegations of infringement pursuant to 17 U.S.C. § 512(g)(3).” This statement, even if true, is immaterial, since 17 U.S.C. § 512(g)(3) does not apply here for the same reasons stated above: the DMCA requires that such a counter-notification must include “Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.” 17 U.C.S. § 512(c)(3)(A)(iii). The RIAA Notices fail to provide the required information, for three independent reasons. *First*, this provision does not, and cannot, apply to an ISP like Cox that does not store or index the relevant “material” online, since

it is not possible for an ISP to remove or disable access to such material. *Second*, the information in the RIAA Notices was insufficient to permit Cox to locate the material at issue, which, again, [REDACTED] *Third*, to the extent Plaintiffs claim that Cox and/or its subscribers infringed additional works that may have been *included* in a torrent file (along with the work that was actually named in a particular RIAA Notice), the RIAA Notices failed to provide the required “[i]dentification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.” 17 U.C.S. § 512(c)(3)(A)(ii).

15. **Exhibit K8** is a true and correct copy of a document Plaintiffs produced in this matter with Bates number Plaintiffs_00288740, titled “NIST Special Publication 800-175B: Guideline for Using Cryptographic Standards in the Federal Government: Cryptographic Mechanisms” and dated August, 2016 (the “NIST Guideline”).

a) The NIST Guideline [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at Plaintiffs

00288751 (numbered p. 4).

b) The NIST Guideline further explains: [REDACTED]
[REDACTED]
[REDACTED] *Id.* at Plaintiffs 00288766 (numbered p.20).

c) SHA-1 is classified as a cryptographic hash function. *Id.* at Plaintiffs_00288806 (numbered p.59).

16. **Exhibit K9** is a true and correct copy of a document Cox produced in this action with Bates numbers COX_SONY_00000508-580, which is titled “Customer Safety and Abuse Operations Residential Abuse Ticket Handling Procedures,” dated October 18, 2012. The section concerning “COPYOTHER” complaints is at pages 9-13 (Bates COX_SONY_00000516-520). At page 10 (COX_SONY_00000517), the document describes the [REDACTED]

[REDACTED]

17. **Exhibit K10** is a true and correct copy of representative notices produced by Plaintiffs in this action, each of which Plaintiffs have represented was sent by RIAA to Cox during the Claims Period. These notices bear the following Bates numbers: Plaintiffs_00104130; Plaintiffs_00112675; Plaintiffs_00148396; Plaintiffs_00148541; and Plaintiffs_00200764. Each of these notices (like all of Plaintiffs’ notices) [REDACTED]

[REDACTED]

[REDACTED]

18. Plaintiffs’ SUF 18 states: “When Cox forwarded MarkMonitor’s notices to Cox’s subscribers, Cox directed its subscribers to [REDACTED]

[REDACTED] Plaintiffs’ SUF 18 relies on Plaintiffs’ Exhibit 14, which I have also reviewed. SUF 18 is misleading in its [REDACTED]

[REDACTED] since Plaintiffs’ Ex. 14 merely states: [REDACTED]

[REDACTED] The email address [REDACTED]

[REDACTED] first appears at page 4 of that exhibit.

19. **Exhibit K11** comprises representative emails that Cox received from subscribers,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These emails are Bates
numbered:

COX_SONY_00959447 - 55	COX_SONY_00962864 - 74
COX_SONY_00959466 - 75	COX_SONY_00965922 - 30
COX_SONY_00959932 - 36	COX_SONY_00966338 - 42
COX_SONY_00962134 - 37	COX_SONY_00967293 - 00
COX_SONY_00962242 - 46	COX_SONY_00967573 - 81
COX_SONY_00962648 - 54	COX_SONY_00967660 - 72
COX_SONY_00962781 - 85	COX_SONY_00969510 - 18
COX_SONY_00962859 - 63	COX_SONY_00970643 - 47

20. **Exhibit K12** is a true and correct copy of a representative email and attachments,

[REDACTED]

[REDACTED]

[REDACTED] The email is Bates numbered RIAA_00128042,
and the attached spreadsheets are Bates numbered RIAA_00128043 and RIAA_00128044. (The
attachments, which were produced in native format, have been printed in true and correct copies
for purposes of my Declaration.) This email and its attachments clearly show that [REDACTED]

[REDACTED]

[REDACTED] See RIAA_00128043 (page titled
“RIAA Monthly Call Center Report: End User Dashboard”), [REDACTED]

[REDACTED]

The documents also clearly indicate that [REDACTED]

[REDACTED] See, e.g., *id.*, [REDACTED]

[REDACTED]

[REDACTED]

- **Plaintiffs’ notices list 1,998 works (title-artist pairs)**

21. Plaintiffs represent that **Plaintiffs’ Exhibit 70**, which is attached to the Gould Declaration, is a true and correct copy of Plaintiffs_00286430 (“Plaintiffs’ Notice Chart”), which Plaintiffs produced in discovery on March 25, 2019. *See* Gould Decl. ¶ 5. Plaintiffs have represented that this document is a spreadsheet [REDACTED]

[REDACTED] I have reviewed Plaintiffs’ Notice Chart, and it contains the following column names [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22. Based on my review, Plaintiffs’ Notice Chart contains [REDACTED]
[REDACTED] between Feb. 1, 2013 and Nov. 26, 2014 (the “Claims Period”). [REDACTED]
[REDACTED] **Exhibit K13_A**
 (“Noticed Works by Artist”), which was prepared under my direction, is a true and correct copy of spreadsheet data excerpted from Plaintiffs’ Ex. 70. The Noticed Works by Artist spreadsheet lists [REDACTED]

[REDACTED] This document was prepared by: (1) filtering Plaintiffs' Notice Chart to display only notices sent during the Claims Period; (2) de-duplicating the list so that [REDACTED]

[REDACTED]. **Exhibit K13_B** ("Noticed Works by Title"), which was also prepared under my direction, contains the same information as **Exhibit K13_A**, but [REDACTED].

- **MarkMonitor did not download content from online peers**

23. I am readily familiar with discovery that has been conducted and documents that have been exchanged in this litigation. To my knowledge, Plaintiffs and their agents (including the RIAA and MarkMonitor) have not produced files, or pieces of files, purporting to be copies of works-in-suit downloaded from any Cox subscriber.

- **Plaintiffs' Witnesses**

24. **Exhibit K14** is a true and correct copy of relevant excerpts from the June 28, 2019 deposition transcript of Plaintiffs' expert Barbara Frederiksen-Cross.

a) 58:4-9: [REDACTED]
[REDACTED]
[REDACTED]

25. **Exhibit K15** is a true and correct copy of the Expert Report of Plaintiffs' Expert Barbara Frederiksen-Cross, served on April 10, 2019. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) ¶ 30: [REDACTED]
[REDACTED]
[REDACTED]

b) ¶ 31:

c) ¶ 32:

d) ¶ 42 n.8:

26. Exhibit **K16** is a true and correct copy of the Expert Report of Plaintiffs' Expert George P. McCabe, served on April 10, 2019. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) ¶ 24:

27. Exhibit **K17** is a true and correct copy of relevant excerpts from the June 13, 2019 deposition transcript of Sam Bahun, who was the Rule 30(b)(6) designee for MarkMonitor, Inc. For ease of reference, the portions cited in Cox's Opposition are set forth here:

197:3-10:

b) 147:15-25:

149:13-151:1

[REDACTED]

d) 102:25-103:21: [REDACTED]

[REDACTED]

e) 100:23-101:1: [REDACTED]

[REDACTED]

28. **Exhibit K18** is a true and correct copy of relevant excerpts from the July 2, 2019 deposition transcript of Slawomir Paszkowski, the Rule 30(b)(6) designee of MarkMonitor Inc. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 81:6-14: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) 97:19-98:12: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) 123:17-124:10: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

d) 125:6-13:

[REDACTED]

29. **Exhibit K19** is a true and correct copy of relevant excerpts from the May 6, 2019 deposition transcript of Vance Ikezoye, the Rule 30(b)(6) designee of Audible Magic Corporation. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 175:21- 177:22:

[REDACTED]

[REDACTED]

30. **Exhibit K20** is a true and correct copy of excerpts from the June 25, 2019 deposition of Plaintiffs' Expert William Lehr. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 116:22-117:12 [REDACTED]

b) 118:18-21 [REDACTED]

c) 355:12-16 [REDACTED]

d) 339:5-340:11: [REDACTED]

[REDACTED]

e) 134:22-135:7:

[REDACTED]

31. **Exhibit K21** is a true and correct copy of the Expert Report of Plaintiffs' Expert William Lehr, served on April 19, 2019. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) ¶ 27:

[REDACTED]

32. **Exhibit K22** is a true and correct copy of relevant excerpts from the April 29, 2019 deposition of Jorge Fuenzalida, the 30(b)(6) designee of inCode Consulting, A Division of Ericsson Inc. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 85:9-18: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) 85:25-86:13: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) 167:16-22: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. **Exhibit K23** is a true and correct copy of relevant excerpts from the June 28, 2019 deposition transcript of Steven Poltorak, the Rule 30(b)(6) designee of the Warner Music Group Plaintiffs. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 47:23-48:11: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- **Cox's Witnesses**

34. **Exhibit K24** is a true and correct copy of the Rebuttal Expert Report of Cox's expert Dr. Kevin C. Almeroth, served on May 15, 2019. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) ¶ 30: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) ¶ 146: [REDACTED]

[REDACTED]

[REDACTED]

c) ¶ 149. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. **Exhibit K25** is a true and correct copy of the Rebuttal Expert Report of Cox's Expert of Cox's expert Lynne Weber, served on May 15, 2019.

36. **Exhibit K26** is a true and correct copy of the Rebuttal Expert Report of Cox's Expert Dr. Nick Feamster, served on May 15, 2019. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) ¶ 27: [REDACTED]

[REDACTED]

[REDACTED]

b) ¶ 32: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) ¶ 33: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

d) ¶ 34: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

e) ¶ 35: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

f) ¶ 42: [REDACTED]
[REDACTED]
[REDACTED]

g) ¶ 76: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

h) ¶¶ 82-84: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

i) ¶ 99: [REDACTED]

[REDACTED]

j) ¶¶ 101, 102: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

k) ¶ 129: [REDACTED]

[REDACTED]

l) ¶ 130: [REDACTED]

m) ¶ 132: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

n) ¶ 156: [REDACTED]

[REDACTED]

o) ¶ 157: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

p) ¶ 158: [REDACTED]
[REDACTED] [fn omitted]

q) ¶ 159: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

37. Exhibit **K27** is a true and correct copy of the Supplemental & Rebuttal Expert Report of Cox's Expert Christian Tregillis, served on May 15, 2019. For ease of reference, some of the pertinent portions cited in Cox's Opposition are set forth here:

a) ¶ 13: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) ¶ 35: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) ¶ 38: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38. **Exhibit K28** is a true and correct copy of the July 1, 2019 deposition transcript of Marcus Delgado, Cox's 30(b)(6) witness. For ease of reference, the portions cited in Cox's Opposition are set forth here:

- a) 63:1-15: [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

39. **Exhibit K29** is a true and correct copy of relevant excerpts from the June 24, 2019 deposition transcript of Cox's expert Christian Tregillis. For ease of reference, the portions cited in Cox's Opposition are set forth here:

- a) 73:8-22: [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

40. **Exhibit K30** is a true and correct copy of relevant excerpts from the May 29, 2019 deposition transcript of Cox's expert Dr. Nick Feamster. For ease of reference, the portions cited in Cox's Opposition are set forth here:

- a) 66:5-9: [REDACTED]
[REDACTED]
- b) 189:13-25: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- c) 198:15-22: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- d) 199:2-4: [REDACTED]
- e) 283:9-18: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- f) 284:2-15: [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

g) 285:3-8: [REDACTED]

[REDACTED]

[REDACTED]

h) 285:15-23: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

i) 286:4-15: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

j) 287:20-288: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

41. **Exhibit K31** is a true and correct copy of relevant excerpts from the June 4, 2019 deposition of Randall Cadenhead, Cox's former Privacy Counsel.

a) 155-156: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) 217:2-10: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) 286:17-288:5: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. **Exhibit K32** is a true and correct copy of the April 15, 2019 deposition transcript of Linda Trickey, Cox's 30(b)(6) witness. For ease of reference, the portions cited in Cox's Opposition are set forth here:

- a) 50:12-22: [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

b) 51:5-18: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

c) 56:20-57:1: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

d) 44:5-10: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

e) 307:3-8: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

f) 29:12-16: [REDACTED]
[REDACTED]

g) 46:9-17:

[REDACTED]

h) 183:21-24:

[REDACTED]

43. **Exhibit K33** is a true and correct copy of relevant excerpts from the April 5, 2019 deposition transcript of Sanford Mencher, Cox's Rule 30(b)(6) designee. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 44:7-12:

[REDACTED]

44. **Exhibit K34** is a true and correct copy of relevant excerpts from the June 5, 2019 deposition transcript of Brent Beck, Cox's Rule 30(b)(6) designee. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 45:11-15:

[REDACTED]

b) 83:25-84:7:

[REDACTED]

[REDACTED]

[REDACTED]

c) 85:12-21: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

d) 134:21-135:12: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e) 215:3-216: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45. **Exhibit K35** is a true and correct copy of relevant excerpts from the June 14, 2019 deposition transcript of Sidd Negretti, Cox's Rule 30(b)(6) designee. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 91:3-9: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) 91:23-92:23: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) 98:21-99:10: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

d) 183:11-15: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e) 188:22-189:4: [REDACTED]

46. **Exhibit K36** is a true and correct copy of excerpts from the May 8, 2019 deposition of Clint Summers, Cox's Director of Advanced Network Platforms. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 33:22-34:7: [REDACTED]

b) 188:18-24:

[REDACTED]

47. **Exhibit K37** is a true and correct copy of relevant excerpts from the July 2, 2019 deposition of Jason Zabek, Cox's former Lead Abuse Engineer.

a) 44:3-45:12:

[REDACTED]

b) 70:24-71:8: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) 72:14-22: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

d) 73:2-74:6: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e) 120:12-121:12: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

f) 62:18-65:6: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

g) 60:9-25: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

h) 213:1-10, 216:21: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

i) 214:4-8: [REDACTED]

[REDACTED]

[REDACTED]

j) 215:14-216: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

k) 228-229:

[REDACTED]

48. **Exhibit K38** is a true and correct copy of relevant excerpts from the May 15, 2019 deposition of Joseph Sikes, formerly an Abuse Engineer Level 3 at Cox. For ease of reference, the portions cited in Cox's Opposition are set forth here:

a) 250:1-251:9:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) 246:2-18: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) 99-100: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. **Exhibit K39** is a true and correct copy of the Expert Report of Plaintiffs' expert, Dr. Terrence P. McGarty served on April 10, 2019.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 24th day of September, 2019 in Kensington, California.

/s/ /Thomas J. Kearney/

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